

**ADEQUATE PUBLIC FACILITIES
ADVISORY COMMITTEE**

ACTION MINUTES

MEETING OF July 14, 2011

The meeting was convened at 7:03 p.m. In attendance – Julie Carr, Dennis Cain, Soo Lee-Cho, Tom Gibney, Charles Littlefield, Eric Siegel, and Roald Schrack. Sean Hart and Jason Anthony were absent.

The chair moved, seconded by Eric Siegel, to approve the agenda. The motion passed unanimously.

The meeting then turned to presentations by invited guests representing the development community. The guest speakers were William Kominers, Erica Leatham, Jody Kline, and Samantha Mazo. All are attorneys that have represented development applications in the city over the years.

Mr. Kominers opened by stating his view that the philosophy of and APFO is to balance both sides of the equation – assure that the facilities needed will keep pace with the development, but also to keep the County focused on remedies to allocate the resources. Applicants essentially have two choices – pay for the needed facilities or wait for the County to provide them. Payment may cover the entire project, or it may be a contribution to needed County projects.

For schools, there is the difference in the capacity limit, where the City is at 110% of program capacity, while the County limit is 120%. Between 105% and 120%, the County imposes a school facility payment for each student. The County evaluates the capacity within the cluster and takes an average, while the City measures on an individual school basis both one and two years out. Under the Beall's Grant II court decision, the City must reserve capacity for all approved development, while the county only has to use the growth projections from MCPS for five years out.

In response to an inquiry from Tom Gibney, Mr. Kominers noted the differential between the test by cluster vs. the city's single school test. He said that one issue is that the smaller the sample, the more opportunity for the projections to be off. The County is going to allocate resources to the worst areas, and if the city schools in aggregate aren't as bad as some others, even if a city school is above 110%, then the city may not be in line for the needed improvements. The County might even decide to change the program capacities. The city is essentially a supplicant to the county just like a developer might be.

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Charles Littlefield noted that from the parent's perspective, they only focus on their own school. Mr. Kominers noted that similar requirements may be a reason for similar treatment. On the question of what constitutes new development, Mr. Kominers opined that it is the first occupancy in whatever time it takes. In his opinion, it takes up to 4 years for an approved development to come to fruition.

Ms. Leatham focused on the waiver provisions in the standards manual. The waivers were allowed based on the character of the uses, but the waiver procedures were not set forth in the manual. From her perspective it would be better if some of these uses were just exempt from the APFS. There should also be consideration of some *de minimis* standards for some uses as well. If the waivers are to remain, then there should be some criteria under which they might be waived – economic policies or housing policies, for instance. The waivers may need to get Mayor and Council approval, even if the balance of the project decision was by another Approving Authority. There was discussion among the committee about how the Silverwood decision was made and that it was a *de facto* waiver.

Ms. Mazo focused on traffic issues. She believes there needs to be some minor tweaks to the Comprehensive Transportation Review document. There are two barriers to the APF review – The number of intersections that have to be evaluated. For large projects that generated more than 150 new trips up to 16 intersections might be included (later corrected to 700 trips). The range is so broad that it is almost inevitable that one or more of them will be failing. We should consider only the most “important” intersections.

The second barrier is that the CTR allows no more than 30% of the trips to be mitigated, regardless of the location. There should be an allowance to mitigate more trips. The County allows transportation management agreements that require the developer to mitigate the trips in the peak hour, using a variety of methods. The County does monitor these mitigation programs to make sure they are working. There may be some fall-back options in case the initial program isn't meeting the goals. In answer to a query, it was noted that these agreements typically last for 12 years, the limit of the County's APFO approval.

Charles Littlefield asked what the most effective mitigation measure is. Ms. Mazo answered that proximity to Metro was the biggest factor. Other effective measures included a limitation on parking and/or a shared parking program. The question was then asked to be directed to the staff was why is there this 30% limitation?

Eric Siegel asked if the City and County share traffic information. The answer was that the Council of Governments (COG) is the regional clearing house. We should also consider a consolidated series of mitigations – in the County this has led to the Transportation Management Districts (TMD's). With regard to the White Flint area, there are likely to be some congestion issues until the funding is available to do the required improvements.

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Jody Kline began by noting the frustration in not being able to control what happens beyond our borders. Another issue is that, because we are the County seat, it draws other government agencies, many of which are not subject to the APFO. Another aspect is a recent resurgence in annexations which may further erode our ability to regulate.

The City of Gaithersburg in the past had been more aggressive in enforcing its APFO, which created some issues. They are not looking at some flexibility since their tax base is at issue. Rockville has now got the reputation of being the toughest place in the County to do business.

The question was asked about where the market was going. The response was that getting an early approval helps in marketing to tenants by being able to move forward quickly. Currently, the office market is still weak, but the multi-family market is strong.

The meeting then turned to the review of the July 6 minutes. Some revisions were noted. Tom Gibney moved, seconded by Eric Siegel to approve the amended minutes. The motion passed unanimously. The committee then reviewed the minutes from the July 7 meeting. Some revisions were noted. Eric Siegel moved, seconded by Charles Littlefield, to approve the revised minutes.

The committee then picked up the discussion on the Fire/EMS standards. The general consensus is that the EMS availability and response time is most important, given the difference between EMS and fire calls in the city. Some issues to be considered include:

What is the real process, if an engine or EMT arrives first;

What is the process if the patient requires transport;

Does the response map change depending on whether it is fire or emergency response;

There was general agreement among the committee that the Planning Commission should investigate whether 2 or 3 stations is sufficient, and put more emphasis on EMT services. Also, the measure should be arrival on-site, not whether it is the front or back door. Also, do we really need to differentiate high-risk uses?

It was noted that the next meeting will likely begin at 6:00 p.m. if enough members are available

The meeting was adjourned at 10:04 p.m.